

CRS Report for Congress

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Kosovo's Future Status and U.S. Policy

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Summary

The future status of Kosovo is perhaps the most sensitive and potentially destabilizing political question in the Balkans. The Administration views “getting Kosovo right” as key to integrating the Balkans into Euro-Atlantic institutions. This report discusses the issue of Kosovo’s future status; that is, whether it should become an independent country, or have some form of autonomy within Serbia. Talks on Kosovo’s status could start in fall 2005, if Kosovo is deemed to have made sufficient progress on a set of standards established by the international community. The 109th Congress may consider legislation on Kosovo’s status. This report will be updated as events warrant. For more on the current situation in Kosovo, see CRS Report RL31053, *Kosovo and U.S. Policy*.

Background

The current status of Kosovo is governed by U.N. Security Council Resolution 1244, passed in June 1999 at the end of the Kosovo conflict. The resolution authorizes an international military and civilian presence in Kosovo, the duration of which is at the discretion of the Security Council. The NATO-led peacekeeping force KFOR is charged with maintaining a secure environment, while the U.N. Mission in Kosovo (UNMIK) is given the chief role in administering Kosovo on a provisional basis. The resolution provides for an interim period of autonomy for Kosovo of undefined length, until negotiations on the future status of the province take place. UNMIK is tasked with gradually transferring its administrative responsibilities to elected, interim autonomous government institutions, while retaining an oversight role.

In a future stage, UNMIK will oversee the transfer of authority from the interim autonomous institutions to permanent ones, after Kosovo’s future status is determined. UNSC Resolution 1244 provides little insight into how the status issue should be resolved, saying only that it should be determined by an unspecified “political process.” However, the resolution explicitly confirms the territorial integrity of the Federal Republic of Yugoslavia (consisting of Serbia and neighboring Montenegro) and calls for “substantial autonomy” for Kosovo “within the Federal Republic of Yugoslavia.” The FRY was dissolved in February 2003, replaced with a looser “state union” entitled “Serbia

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and Montenegro.” Kosovars believe that the dissolution of the FRY invalidates this portion of UNSC Resolution 1244, while the international community views Kosovo as part of Serbia.

In May 2001, after consultation with local leaders, UNMIK issued a Constitutional Framework for Provisional Self-Government in Kosovo. The Constitutional Framework called for a Kosovo parliament and government, which was formed in March 2002 after parliamentary elections. UNMIK has oversight or control of policy in many “reserved competencies,” including law enforcement, the judiciary, protection of the rights of communities, monetary and budget policy, customs, state property and enterprises, and external relations. UNMIK can invalidate legislation passed by the parliament if it judges it to be in conflict with UNSC Resolution 1244. KFOR remains in charge of Kosovo’s security. The Constitutional Framework does not address the question of Kosovo’s future status, saying only that it would be determined through a process “which shall...take into account all relevant factors, including the will of the people.”

“Standards Before Status”

In 2002, UNMIK chief Michael Steiner outlined a series of standards of international expectations for Kosovo’s institutions and society, and said that they should be achieved before the issue of Kosovo’s future status is discussed. This policy has been dubbed “standards before status,” and it forms the basis of U.S. and international policy in Kosovo. The standards are (1) the existence of effective, representative and functioning democratic institutions; (2) enforcement of the rule of law; (3) freedom of movement; (4) sustainable returns of refugees and displaced persons, and respect for the rights of communities; (5) creation of a sound basis for a market economy; (6) fair enforcement of property rights; (7) normalized dialogue with Belgrade; and (8) transformation of the Kosovo Protection Corps (KPC) in line with its mandate. UNMIK released a highly detailed “Standards Implementation Plan” on March 31, 2004.¹

In November 2003, U.S. Under Secretary of State Marc Grossman announced, with the support of the other members of the international Contact Group (Britain, France, Germany, Italy, and Russia), a formal review in mid-2005 on Kosovo’s progress toward meeting the standards. If in the judgement of the Contact Group, the U.N. Security Council and other interested parties, this progress is “sufficient,” a process to determine the province’s status may begin.

The international community’s nearly five years of efforts to bring stability to Kosovo suffered a serious blow in March 2004. The death of two ethnic Albanian boys near the divided city of Mitrovica sparked two days of rioting throughout Kosovo on March 17-18, in the worst inter-ethnic violence since the end of the 1999 Kosovo war. Ethnic Albanian crowds attacked several ethnic Serb enclaves as well as international security forces trying to control the rioters. In the course of two days, 19 civilians were killed, more than 900 persons were injured, and over 4,000 forced from their homes by the violence.

¹ For copies of UNSC Resolution 1244 and the Standards Implementation Plan, see the UNMIK website, available online at [<http://www.unmikonline.org>], accessed on July 18, 2005.

The March 2004 riots in Kosovo called into question the performance of UNMIK and KFOR, as well as Kosovo's government institutions and media. The international community took two main steps in response. One was to reorganize international procedures and organizations in Kosovo to improve their effectiveness. Another was to streamline the standards process to focus on "priority" standards, mainly those involving the respect of minority rights. According to some U.N. officials and independent observers, one key purpose of streamlining the standards was to accelerate consideration of Kosovo's status and the eventual departure of UNMIK from Kosovo.

2005: Year of Decision for Kosovo?

In testimony before the House International Relations Committee on May 18, 2005, Undersecretary of State Nicholas Burns laid out a new U.S. policy initiative on Kosovo, in coordination with the U.N. and the Contact Group.² He declared that 2005 was the "year of decision" for Kosovo, meaning that the United States wanted a process to determine Kosovo's future status to be launched this year. He said that the current uncertainty over status is "not sustainable or desirable" because it "satisfies no one and leaves open the possibility of renewed ethnic violence," threatening to undo U.S. successes in the Balkans over the past decade.

Consistent with the review date policy announced in 2003, U.N. envoy Kai Eide is currently preparing a report on whether Kosovo has made "sufficient progress" in implementing the standards. Burns said Eide would base the evaluation not just on "technical" fulfillment of the standards but also on "larger political issues." According to Undersecretary Burns, while the outcome is not a foregone conclusion, the United States is "hopeful" that the review (which is expected to be completed in "late summer") will be positive. If the assessment is in fact positive, Burns said, the U.N. and the Security Council would decide "this fall" whether to open Kosovo status negotiations. Burns said that the United States would call for a "swift" launch of the talks. He said the United States would advocate that "a senior European political figure" be appointed by the U.N. (in consultation with the Contact Group) to lead the talks. This figure would have a "senior American diplomat" as his deputy.

Burns said that the talks would involve "dialogue" between the Serbian and Kosovo governments, while the Kosovo Serbs and other Kosovo minority communities would "have a role in the process." The format for the talks has not been decided but could involve convening all of the leaders in one place, as was done for Bosnia's Dayton Peace Accord, or shuttle diplomacy, or some other format. Given its role as mediator, the United States has not supported a particular outcome for status talks, ruling out only one outcome — direct rule by Belgrade, and saying that the result must enhance regional stability and the Euro-Atlantic integration of the Balkans. Burns laid out several principles for a settlement, including that it must "be based on multi-ethnicity with full respect for human rights, including the right of all refugees and displaced persons to return to their homes in safety; offer effective constitutional guarantees to ensure the protection of minorities; include specific safeguards for the protection of cultural and religious heritage; and promote effective mechanisms for fighting organized crime and

² For a text of Undersecretary Burns's statement, see the State Department website: [<http://www.state.gov/p/us/rm/2005/46471.htm>]

terrorism.” Burns added that the Contact Group has told the parties that status “must not be decided by any party unilaterally or result from the use of force; not change the boundaries of the current territory of Kosovo, either through partition or through a new union of Kosovo with any country or part of any country after the resolution of Kosovo’s status; fully respect the territorial integrity of all other states in the region; ensure that Kosovo continues to develop in a sustainable way both politically and economically; and that Kosovo does not pose a military or security threat to its neighbors.”

Burns added that an international civilian and military presence would continue after a status settlement in order to ensure its full implementation, including provisions on minority rights. He said that the United States would like the European Union to lead this effort, although the United States would remain “an active partner.” Burns said that the United States hopes that a U.N. Security Council resolution to endorse the outcome of the status talks will be approved before the end of 2006.

Options for Kosovo’s Status

Although it is too early to say what Kosovo’s future status will be, direct rule of the entire province from Belgrade is unlikely, since it could only be accomplished by violent actions similar to those taken by Milosevic in 1998 and 1999, which triggered international intervention in the first place. Another possible outcome is independence. Between these two poles lie some form of complete or near-complete self-government for Kosovo, while retaining some degree of nominal Serbian sovereignty, the exact contours of which would be subject to negotiation between Belgrade, the Kosovo government, and the international community. These outcomes could stand on their own or be accompanied by cantonization or partition of Kosovo into a small, Serbian-controlled area in northern Kosovo and an ethnic Albanian-controlled south. Each of these possibilities could have positive or negative consequences for Kosovo and the region.

Independence for Kosovo would respond to the political preferences of the overwhelming majority of the province’s inhabitants. However, some observers fear that an independent Kosovo could destabilize the region by encouraging separatist ethnic Albanian forces in Macedonia, as well as Serbia’s Presevo Valley, where many ethnic Albanians live. Some also fear international support for Kosovar independence could undermine the democratic leadership in Belgrade and strengthen extreme nationalists there. There are also questions about the ability of the Kosovars to effectively run their own affairs in the near future or implement any commitments on minority rights, due to the country’s poverty and the immaturity of ethnic Albanian political and social institutions. An effective Kosovo government is particularly important for the issue of dealing with powerful organized crime groups and political extremists in the province.

Some have suggested that Kosovo should receive “conditional independence.” Independence would be granted in exchange for pledges from Kosovo to rule out the establishment of a greater Albania and to provide security guarantees to the Serb minority.³ Some call for a Kosovo constitution to be drawn up as part of the status talks

³ Discussions with Balkan officials and U.S. Balkans experts, January 2004.

that would provide for oversight by international bodies and the continued participation of international judges in Kosovo's legal system.⁴

Those who favor dividing Kosovo believe it would be a more realistic alternative than trying to impose multi-ethnicity. In April 2004, the Serbian government unveiled a decentralization plan for Kosovo. The plan would set up autonomous Serb regions in northern Kosovo, similar in some ways to the current division of Bosnia into "entities" under weak central control. Under the proposal, Serbian-majority areas in Kosovo would be controlled by local Serb authorities, with their own police. Ethnic Albanian authorities would control the rest of the province, although the whole province would remain at least nominally within Serbia. Such a plan would have the benefit, from Belgrade's point of view, of consolidating its control over northern Kosovo, where most Serbs in the province now live, and where important economic assets, such as the Trepca mining complex, are found. Ethnic Albanian leaders strongly oppose the idea for these very reasons.

International officials fear that partition of the province along ethnic lines could spark renewed violence over disputed areas. They also believe it could set a bad example for the region, resulting in renewed calls to partition Bosnia, southern Serbia, and Macedonia. To a certain extent, the 2004 Serbian plan seeks to strengthen and ratify the existing situation in northern Kosovo. Since 1999, international officials and ethnic Albanians have criticized Serbia for supporting "parallel structures" that cement its control over Serb-majority areas at the expense of UNMIK's authority. UNMIK is working on plans for local government reform that would devolve more powers to the local level, but not to the extent advocated by the Serbian government. Some observers believe that the Serbian government has begun to de-emphasize its decentralization proposals, given some of the issues raised above, and focus on ensuring minority rights throughout a united Kosovo. Serbian officials have encapsulated their current position on status with the phrase "more than autonomy, but less than independence."

One important question is what to do if the parties to the negotiation cannot reach agreement. U.S. officials say that the international community would not try to impose a result. However, given Belgrade's reluctance to discuss future status and the Kosovars rejection of any outcome but independence, it may be difficult to reach a consensus. The United States and its allies may therefore be faced with an embarrassing deadlock, such as occurred at the failed Rambouillet negotiations that preceded the NATO bombing campaign against Serbia in 1999. In his testimony before the House International Relations Committee, Undersecretary Burns warned that "undue delay" or obstruction by Serbia in status talks could cause the United States to "reevaluate Belgrade's role."

On the other hand, if the international community attempted to impose a settlement, it would be faced with difficult problems. If the Serbian side rejected a proposed settlement, it could prevail upon Russia to threaten to veto a Security Council resolution endorsing it. The EU could have the strongest leverage over Serbia, if it decided to condition Belgrade's EU integration on its acceptance of an EU-supported settlement of the status question. However, it is unclear whether the EU would make such a direct linkage or whether future EU membership for Serbia is a credible "carrot," given the EU's

⁴ See Kosovo: Toward Final Status, International Crisis Group, January 24, 2005, at [http://www.crisisweb.org].

current constitutional problems. A move by the United States or other countries to endorse a proposed settlement without the support of Serbia, Russia, other members of the Contact Group, or the Security Council could provoke recriminations, such as those that bedeviled international policy in the Balkans in the early 1990s. Leverage over the Kosovar side may also be limited. Kosovar leaders know that the international community has little desire to administer Kosovo indefinitely, particularly given the possibility that the ethnic Albanian majority in Kosovo could become more hostile to the international presence if their demands for independence continue to be rejected. However, Kosovo's continued need for aid and security guarantees may be important levers for the international community in the talks.

Congressional Concerns

The issue of Kosovo's future status has been of significant interest to Members of Congress. Some Members favor independence for Kosovo as soon as possible, a view not shared by the Administration. They say Kosovars should enjoy the same right of self-determination enjoyed by other peoples in the region and throughout the world. On the other hand, other Members are more skeptical about pushing strongly for Kosovo independence in the near future. They say that moving too quickly could destabilize the situation in the Balkans. They favor continuing to press the people of Kosovo to implement the standards.

In the 108th Congress, three resolutions were introduced that advocate U.S. support for Kosovo's independence. H.Res. 11 and H.Res. 28 express the sense of the House that the United States should declare support for Kosovo's independence. H.Res. 11 conditions this support on Kosovo's progress toward democracy, while H.Res. 28 supports independence without prior conditions. S.Res. 144 expresses the sense of the Senate that the United States should support the right of the people of Kosovo to determine their political future once "requisite progress" is made in achieving U.N. standards in developing democratic institutions and human rights protections. H.Res. 28 was discussed at a House International Relations Committee hearing on Kosovo's future in May 2003 and at a markup session on the resolution in October 2004 but was not voted on by the committee and did not receive floor consideration in the 108th Congress.

In the wake of the March 2004 violence in Kosovo, several resolutions were introduced to condemn the attacks, as well as subsequent attacks on Islamic sites in Serbia. These included H.Res. 587 (Christopher Smith) and H.Res. 596 (Burton). On April 8, the Senate agreed by unanimous consent to S.Res. 326 (Voinovich). The resolution, a slightly modified companion version of H.Res. 596, strongly condemned the violence, recognized the commitment of Kosovo and Serbian leaders to rebuild what had been destroyed and encourage the return of refugees, called on leaders in Kosovo to renounce violence and build a multi-ethnic society based on the standards for Kosovo, recommended the restructuring of UNMIK, and urged the reinvigoration of dialogue between Kosovo and Belgrade. The resolutions note U.S. and international support for the "standards before status" policy.

The 109th Congress may take up the issue of Kosovo's status. On January 4, 2005, Representative Tom Lantos introduced H.Res. 24, which expresses the sense of the House that the United States should support Kosovo's independence. Other resolutions may be introduced in anticipation of status negotiations.